

A-Engrossed
House Bill 3638

Ordered by the House February 18
Including House Amendments dated February 18

Sponsored by COMMITTEE ON JUDICIARY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Modifies process for release on post-prison supervision following successful completion of alternative incarceration program. Modifies certain rights and privileges of persons convicted of felony while incarcerated. Requires counties, with state reimbursement of costs, to conduct national criminal history check for persons incarcerated in county facilities.

Creates procedures for grant program administered by Department of Corrections, contingent on approval of program by people at next regular general election.

[Declares emergency, effective on passage.]

A BILL FOR AN ACT

1
2 Relating to crime; creating new provisions; and amending ORS 137.281, 137.750, 421.502, 421.508 and
3 421.510.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. (1) When a court sentences a defendant to a term of incarceration that ex-**
6 **ceeds one year, the defendant may request a determination of the defendant's eligibility for**
7 **release on post-prison supervision under ORS 421.508 (4). The court shall order in the judg-**
8 **ment that the Department of Corrections may release the defendant on post-prison super-**
9 **vision under ORS 421.508 (4) only if, after a hearing, the court finds that:**

10 (a) **The defendant meets the eligibility requirements of subsections (2) and (3) of this**
11 **section;**

12 (b) **The defendant was not on probation, parole or post-prison supervision for an offense**
13 **listed in ORS 137.712 (4) or 811.705 (2)(b) at the time of the commission of the current crime**
14 **of conviction;**

15 (c) **The defendant has not previously been released on post-prison supervision under ORS**
16 **421.508 (4);**

17 (d) **The harm or loss caused by the crime is not greater than usual for that type of crime;**

18 (e) **The crime was not part of an organized criminal operation; and**

19 (f) **After considering the nature of the offense and the harm to the victim, the defend-**
20 **ant's successful completion of the program would:**

21 (A) **Increase public safety;**

22 (B) **Enhance the likelihood that the defendant would be rehabilitated; and**

23 (C) **Not unduly reduce the appropriate punishment.**

24 (2) **Except as provided in subsection (4) of this section, a defendant may not be released**
25 **on post-prison supervision under ORS 421.508 (4) if the defendant is being sentenced for a**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **crime under ORS 163.145, 163.165 (1)(a) or (b), 163.525 or 811.705 (2)(b).**

2 **(3) A defendant may not be released on post-prison supervision under ORS 421.508 (4) if**
3 **the defendant is being sentenced for a crime listed in ORS 137.700, 137.707, 163.095 or 181.594**
4 **(4).**

5 **(4) Notwithstanding subsection (1) of this section, the parties may stipulate to a defend-**
6 **ant's eligibility for release on post-prison supervision under ORS 421.508 (4). If the court ac-**
7 **cepts the stipulation, the court does not need to make explicit findings regarding the factors**
8 **described in subsection (1)(b) to (f) of this section. The parties may not stipulate to the de-**
9 **fendant's release on post-prison supervision under ORS 421.508 (4) if the defendant is being**
10 **sentenced for a crime described in subsection (3) of this section.**

11 **(5) If the court makes the findings described in subsection (1) of this section or accepts**
12 **the stipulation of the parties under subsection (4) of this section, the court shall:**

13 **(a) Order on the record in open court as part of the sentence imposed that the defendant**
14 **may be considered by the department for release on post-prison supervision under ORS**
15 **421.508 (4); and**

16 **(b) Include the order described in paragraph (a) of this subsection in the judgment.**

17 **(6) Subject to the requirements of this section, the court may order that the defendant**
18 **serve a minimum period of incarceration before the defendant is released on post-prison**
19 **supervision under ORS 421.508 (4). Nothing in this section authorizes the release of the de-**
20 **fendant on post-prison supervision before the defendant has served the period of time de-**
21 **scribed in ORS 421.508 (4)(b).**

22 **SECTION 2.** ORS 137.750 is amended to read:

23 137.750. (1) When a court sentences a defendant to a term of incarceration upon conviction of
24 a crime, the court shall order on the record in open court as part of the sentence imposed that the
25 defendant may be considered by the executing or releasing authority for any form of temporary
26 leave from custody, reduction in sentence, work release[, *alternative incarceration program*] or pro-
27 gram of conditional or supervised release authorized by law for which the defendant is otherwise
28 eligible at the time of sentencing, unless the court finds on the record in open court substantial and
29 compelling reasons to order that the defendant not be considered for such leave, release or [*pro-*
30 *grams*] **program.**

31 (2) The executing or releasing authority may consider the defendant for [*the programs*] **a pro-**
32 **gram** described in subsection (1) of this section only upon order of the sentencing court appearing
33 in the judgment.

34 (3) As used in this section:

35 (a) "Executing or releasing authority" means the Department of Corrections, State Board of
36 Parole and Post-Prison Supervision, Psychiatric Security Review Board, sentencing court or super-
37 visory authority.

38 (b) "Supervisory authority" has the meaning given that term in ORS 144.087.

39 **SECTION 3.** ORS 421.502 is amended to read:

40 421.502. As used in ORS 421.502 to 421.512:

41 (1) "Cognitive restructuring" means any rehabilitation process that redirects the thinking of an
42 offender into more socially acceptable directions and that is generally accepted by rehabilitation
43 professionals.

44 (2) "Department" means the Department of Corrections.

45 [(3)(a) "Offender" includes a person who:]

1 [(A) *Is in the custody of the department; and*]

2 [(B) *Is at least 18 years of age at the time of entry into the program.*]

3 [(b) *“Offender” includes a person who is under 18 years of age and has been convicted of a crime*
4 *upon remand from the juvenile court.*]

5 [(c) *“Offender” does not include a person convicted of a crime described in ORS 163.095, 163.115,*
6 *163.118, 163.235, 163.355, 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425,*
7 *163.427, 163.435, 163.525, 164.325 or 164.415.*]

8 [(4)] (3) “Program” means the special alternative incarceration program established under ORS
9 421.504 and the intensive alternative incarceration addiction program established under ORS
10 421.506.

11 **SECTION 4.** ORS 421.508 is amended to read:

12 421.508. (1)(a) The Department of Corrections is responsible for determining which offenders are
13 eligible to participate in, and which offenders are accepted for, a program. **However, the depart-**
14 **ment may not release an offender under subsection (4) of this section unless authorized to**
15 **do so as provided in section 1 of this 2008 Act.** [*However, the department may not consider an*
16 *offender for a program unless authorized to do so as provided in ORS 137.750.*]

17 (b) The department may not accept an offender into a program unless the offender submits a
18 written request to participate. The request must contain a signed statement providing that the
19 offender:

20 (A) Is physically and mentally able to withstand the rigors of the program; and

21 (B) Has reviewed the program description provided by the department and agrees to comply with
22 each of the requirements of the program.

23 (c) The department may deny, for any reason, a request to participate in a program. The de-
24 partment shall make the final determination regarding an offender’s physical or mental ability to
25 withstand the rigors of the program.

26 (d) If the department determines that an offender’s participation in a program is consistent with
27 the safety of the community, the welfare of the applicant, the program objectives and the rules of
28 the department, the department may, in its discretion, accept the offender into the program.

29 (2) The department may suspend **or remove** an offender from a program for administrative or
30 disciplinary reasons.

31 **(3) The department may not accept an offender into a program if:**

32 **(a) The department has removed the offender from a program during the term of**
33 **incarceration for which the offender is currently sentenced; or**

34 **(b) The offender has a current detainer from any jurisdiction that will not expire prior**
35 **to the offender’s release from the custody of the department.**

36 [(3)] (4) When an offender has successfully completed a program, the department may release the
37 offender on post-prison supervision **if:**

38 **(a) The court has entered the order described in section 1 of this 2008 Act; and**

39 **(b) The offender has served a term of incarceration of at least one year.**

40 **(5) An offender may not be released on post-prison supervision under subsection (4) of**
41 **this section if the release would reduce the term of incarceration the offender would other-**
42 **wise be required to serve by more than 20 percent.**

43 **(6) For the purposes of calculating the term of incarceration served under subsection**
44 **(4)(b) of this section, the department shall include:**

45 **(a) The time that an offender is confined under ORS 137.370 (2)(a); and**

1 **(b) The time for which an offender is granted nonprison leave under ORS 421.510.**

2 (7) Successful completion of a program does not relieve the offender from fulfilling any other
3 obligations imposed as part of the sentence including, but not limited to, the payment of restitution
4 and fines.

5 **SECTION 5.** ORS 421.510 is amended to read:

6 421.510. [*Offenders participating in a program are eligible for transitional leave as provided in*
7 *ORS 421.168. Notwithstanding the 30-day maximum period allowed in ORS 421.168, the Department*
8 *of Corrections may grant a transitional leave of up to 90 days for an offender in a program. The*
9 *offender may not be released on transitional leave more than 90 days prior to the offender's discharge*
10 *date.*]

11 **(1) The Department of Corrections may consider an offender for nonprison leave under**
12 **this section if the court has entered the order described in section 1 of this 2008 Act.**

13 **(2) Nonprison leave shall provide offenders with an opportunity to secure appropriate**
14 **transitional support when necessary for successful reintegration into the community prior**
15 **to the offenders' discharge to post-prison supervision.**

16 **(3) An offender may submit a nonprison leave plan to the Department of Corrections.**
17 **The plan shall indicate that the offender has secured an employment, educational or other**
18 **transitional opportunity in the community to which the offender will be released and that a**
19 **leave of up to 90 days is an essential part of the offender's successful reintegration into the**
20 **community.**

21 **(4) Upon verification of the offender's nonprison leave plan, the department may grant**
22 **nonprison leave no more than 90 days prior to the offender's date of release on post-prison**
23 **supervision under ORS 421.508 (4).**

24 **(5) The department shall establish by rule a set of conditions for offenders released on**
25 **nonprison leave. An offender on nonprison leave shall be subject to immediate return to**
26 **prison for any violation of the conditions of nonprison leave.**

27 **(6) During the period of nonprison leave, the offender must reside in, and be supervised**
28 **within, the state.**

29 **SECTION 6.** ORS 137.281 is amended to read:

30 137.281. (1) In any felony case, [*when the court sentences the defendant to a term of imprisonment*
31 *in the custody of the Department of Corrections and execution of the sentence is not suspended, or ex-*
32 *ecution is suspended upon condition that the defendant serve a term of imprisonment in the county*
33 *jail,]* **when the defendant is sentenced to a term of incarceration,** the defendant is deprived of
34 all rights and privileges described in subsection (3) of this section from the date of sentencing until:

35 (a) The defendant is **released from incarceration** [*discharged or paroled from imprisonment*];

36 or

37 (b) The defendant's conviction is set aside.

38 **(2) Subsection (1) of this section applies to any term of incarceration, whether the term**
39 **of incarceration was imposed as a result of conviction or as a sanction or revocation re-**
40 **sulting from the defendant's violation of the terms and conditions of probation, parole or**
41 **post-prison supervision.** [*In any felony case, when the court sentences the defendant to a term of*
42 *imprisonment in the custody of the Department of Corrections and execution of the sentence is sus-*
43 *suspended upon any condition other than imprisonment in the county jail, if the sentence of probation is*
44 *revoked and the suspended portion of the sentence is ordered executed, the defendant is deprived of the*
45 *rights and privileges described in subsection (3) of this section from the date the sentence is ordered*

1 *executed until:]*

2 [(a) *The defendant is discharged or paroled from imprisonment; or]*

3 [(b) *The defendant's conviction is set aside.*]

4 (3) The rights and privileges of which a person may be deprived under this section are:

5 (a) Holding a public office or an office of a political party or becoming or remaining a candidate
6 for either office;

7 (b) Holding a position of private trust;

8 (c) Acting as a juror; or

9 (d) Exercising the right to vote.

10 (4) If the court under subsection (1) of this section temporarily stays execution of sentence for
11 any purpose other than probation, the defendant nonetheless is sentenced for purposes of subsection
12 (1) of this section.

13 (5) A person convicted of any crime and serving a term of imprisonment in any federal
14 correctional institution in this state is deprived of the rights to register to vote, update a registra-
15 tion or vote in any election in this state from the date of sentencing until:

16 (a) The person is discharged or paroled from imprisonment; or

17 (b) The person's conviction is set aside.

18 (6) The county clerk or county official in charge of elections in any county may cancel the
19 registration of any person serving a term of imprisonment in any federal correctional institution in
20 this state.

21 (7) Except as otherwise provided in ORS 10.030, the rights and privileges withdrawn by this
22 section are restored automatically upon [*discharge or parole from imprisonment*] **release from**
23 **incarceration**, but in the case of parole shall be automatically withdrawn upon a subsequent
24 imprisonment for violation of the terms of the parole.

25 **SECTION 7. (1) During the intake process, each county shall conduct a national criminal**
26 **history check on every person incarcerated in the county correctional facility.**

27 **(2) The county shall develop policies and procedures to ensure that the results of the**
28 **national criminal history check are received before an inmate is released.**

29 **(3) The state shall reimburse each county for the costs of conducting the national crim-**
30 **inal history checks.**

31 **SECTION 8. As used in section 8, chapter _____, Oregon Laws 2008 (Enrolled Senate**
32 **Bill 1087):**

33 **(1) "Drug-addicted person" means a person who has lost the ability to control the per-**
34 **sonal use of controlled substances or alcohol, or who uses controlled substances or alcohol**
35 **to the extent that the health of the person or that of others is substantially impaired or**
36 **endangered or the social or economic function of the person is substantially disrupted. A**
37 **drug-addicted person may be physically dependent, a condition in which the body requires a**
38 **continuing supply of a controlled substance or alcohol to avoid characteristic withdrawal**
39 **symptoms, or psychologically dependent, a condition characterized by an overwhelming**
40 **mental desire for continued use of a controlled substance or alcohol.**

41 **(2) "Intensive supervision" means the active monitoring of a person's performance in a**
42 **treatment program by a parole and probation officer and the imposition of sanctions, or re-**
43 **quest to a court for sanctions, if the person fails to abide by the terms and conditions of a**
44 **treatment program.**

45 **SECTION 9. (1) The Department of Corrections shall determine which persons are eligible**

1 for treatment under section 8 (1), chapter _____, Oregon Laws 2008 (Enrolled Senate Bill
2 1087), using an actuarial risk assessment tool.

3 (2) The department shall adopt rules to administer the grant program described in sec-
4 tion 8 (1), chapter _____, Oregon Laws 2008 (Enrolled Senate Bill 1087).

5 (3) Prior to adopting the rules described in subsection (2) of this section, the department
6 shall consult with a broad-based committee that includes representatives of:

- 7 (a) County boards of commissioners;
- 8 (b) County sheriffs;
- 9 (c) District attorneys;
- 10 (d) County community corrections;
- 11 (e) The Oregon Criminal Justice Commission;
- 12 (f) Presiding judges of the judicial districts of this state;
- 13 (g) Public defenders; and
- 14 (h) Treatment providers.

15 (4) In determining which grant proposals to fund within each county, the department
16 shall:

- 17 (a) Consult with the committee described in subsection (3) of this section;
- 18 (b) Give priority to those proposals that are best designed to reduce crime and drug ad-
19 diction; and
- 20 (c) Be guided by evidence-based practices, risk assessment tools or other research based
21 considerations.

22 **SECTION 10.** Nothing in section 1, 7, 8 or 9 of this 2008 Act or the amendments to ORS
23 137.281, 137.750, 421.502, 421.508 or 421.510 by sections 2, 3, 4, 5 and 6 of this 2008 Act:

- 24 (1) Creates any claim, right of action or civil liability; or
- 25 (2) Requires a supervisory authority or the Department of Corrections to provide treat-
26 ment to any individual under the authority's supervision or in the custody of the department.

27 **SECTION 11.** Section 10 of this 2008 Act is amended to read:

28 **Sec. 10.** Nothing in section 1[,] or 7[, 8 or 9] of this 2008 Act or the amendments to ORS 137.281,
29 137.750, 421.502, 421.508 or 421.510 by sections 2, 3, 4, 5 and 6 of this 2008 Act:

- 30 (1) Creates any claim, right of action or civil liability; or
- 31 (2) Requires a supervisory authority or the Department of Corrections to provide treatment to
32 any individual under the authority's supervision or in the custody of the department.

33 **SECTION 12.** The amendments to section 10 of this 2008 Act by section 11 of this 2008
34 Act become operative if sections 8 and 9 of this 2008 Act are repealed on December 31, 2008,
35 pursuant to section 14 of this 2008 Act.

36 **SECTION 13.** (1) Section 1 of this 2008 Act and the amendments to ORS 137.750, 421.502,
37 421.508 and 421.510 by sections 2 to 5 of this 2008 Act apply to persons sentenced on or after
38 January 1, 2009.

39 (2) The amendments to ORS 137.281 by section 6 of this 2008 Act apply to persons
40 incarcerated on or after January 1, 2009.

41 **SECTION 14.** Sections 8 and 9 of this 2008 Act:

42 (1) Become operative on January 1, 2009, if Senate Bill 1087 (2008) is referred to the peo-
43 ple and approved by a majority of votes cast thereon at the next regular general election held
44 throughout this state on November 4, 2008, and:

- 45 (a) Initiative Petition 40 (2008) is not placed on the ballot at the next regular general

1 election held throughout this state on November 4, 2008; or

2 (b) Initiative Petition 40 (2008) is placed on the ballot at the next regular general election
3 held throughout this state on November 4, 2008, and:

4 (A) Initiative Petition 40 (2008) is rejected by the people; or

5 (B) Initiative Petition 40 (2008) is approved by the people and Senate Bill 1087 (2008) re-
6 ceives a number of affirmative votes greater than the number of affirmative votes received
7 by Initiative Petition 40 (2008).

8 (2) Are repealed on December 31, 2008, if:

9 (a) Senate Bill 1087 (2008) is not referred to the people at the next regular general
10 election held throughout this state on November 4, 2008; or

11 (b) Senate Bill 1087 (2008) is referred to the people at the next regular general election
12 held throughout this state on November 4, 2008, and:

13 (A) Senate Bill 1087 (2008) is rejected by the people; or

14 (B) Initiative Petition 40 (2008) is placed on the ballot at the next regular general election
15 held throughout this state on November 4, 2008, and:

16 (i) Both Initiative Petition 40 (2008) and Senate Bill 1087 (2008) are approved by a majority
17 of the votes cast thereon; and

18 (ii) Initiative Petition 40 (2008) receives a number of affirmative votes greater than the
19 number of affirmative votes received by Senate Bill 1087 (2008).

20